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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,862	12/30/2003	Richard N. Clark	2578.3007.002	3697

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,862	Applicant(s) CLARK ET AL.	
	Examiner Alfred Joseph Wujciak III	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/30/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/14/03 & 6/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the first Office Action for the serial number 10/748,862, ADJUSTABLE FISHING ROD HOLDER AND MOUNTING TRACK ASSEMBLY, filed on 12/30/03.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 5/14/04 and 6/21/04 were filed after the mailing date of the filing date on 12/30/03. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

The drawings are objected to because figure 1 shows exploded view, which requires bracket, see MPEP, 608.02 under "Exploded View". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as

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not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "120" and "122" have both been used to designate thumb screw mounting hole in figure 12. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-15 and 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said pivot plane" in lines 11 and 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the same" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-15 are rejected as depending on rejected claim 1.

Claim 17, lines 5-6, "the maximum horizontal dimension of the portion of the rod holder apparatus" is indefinite because rod holder apparatus is not being positively cited in the preamble of independent claim 16.

Claim 18, line 4, "the major longitudinal axis of said holder" is indefinite because the holder is not being positively cited in the preamble of independent claim 16.

Claim 18, line 6, "plat" should be changed to ---plate--- for clarification.

Claim 18, line 12, "locking holes" should be changed to ---mounting holes--- for clarification.

Claim 18, line 17, "thumbscrews" should be changed to ---locking knobs--- for clarification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by

US Patent # 3,708,141 to Friedgen et al.

Friedgen et al. teaches an adjustable holding apparatus comprising a base plate (16), a pivot bracket (14) mounted upright on the base plate, and a holder (30). The holder having a locking gear (34) secured to the bracket by a pivot pin (36). The gear has a circumferentially extending row of locking teeth (50) arrayed in the pivot plane. The apparatus includes a locking handle mechanism (38) including a locking pin bodily (56) movable by the mechanism into and out of locking engagement with a selected root space between any two of the teeth.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by US Patent #

6,591,541 to Cummings.

Cummings teaches a mounting track and base plate apparatus (figure 2) comprising an elongated mounting track and a planar base plate (22) adjustably fixed to the track and slidable along the track longitudinally thereof.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friedgen et al. in view of Cummings.

Friedgen et al. teaches the holder (30) comprises a hollow tube but fails to teach the apparatus includes a bungee cord affixed to the upper end of the holder. Cummings teaches the holder (132) being secured by the bungee cord (138). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added bungee cord to Friedgen et al.'s holder as taught by Cummings to provide additional security for a fishing rod within the holder.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings in view of US Patent # 5,259,774 to Gabrius.

Cummings teaches the track comprises a base portion having a flat bottom wall (mounted on element 12) flanked by laterally opposite upright sidewall portions (located between the base and element 54) that terminate at their upper edge at inturned lips (54). The mutually facing end edges of the lips being spaced apart. The upper surface of the track base portion bottom wall being made up of a series of parallel alternating grooves (50) and lands (adjacent to grooves) with the upper surfaces of the lands being coplanar with one another and with the end edges of the upper surface of the bottom wall of the track base portion. The lips having undersurfaces

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spaced above the upper surface of the track bottom wall of the base portion by a distance (figure 2). The base plate is a diamond shape in plan view (col. 4, lines 3-7). The plate has thumbscrew mounting holes (an opening area on the plate where element 24 is screwed therein) aligned along the major axis of the base plate. The base plate has opposite first pair of ends being curved in plan view with a minor radius of curvature (figure 2, col. 4, lines 3-30). The base plate has a diametrically opposite second pair of ends of the base plate are intersected by its minor axis and are curves having a larger radius of curvature than the first pair of ends and are coincident with an imaginary circle whose diameter is only slightly less than the distance between the interior surface of the lips of the track (col. 4, line 3-30). The base plate having locking knobs (24) mounted one in each of holes.

Cummings teaches the track but fails to teach the track is made by extrusion. Gabrius teaches the track (14) is made by extrusion (col. 3, line 34). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used Cummings' track in the extrusion process as taught by Gabrius to provide designer's choice for making the track by the extrusion process.

Allowable Subject Matter

Claims 2-13 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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In regard to claims 2-10 and 15, the prior art fails to teach the locking handle mechanism includes at least one handle arm pivotally mounted to the bracket by the pivot pin. In regard to claims 11-13, the prior art fails to teach the base plate is adjustably fixed to an elongated mounting track and may be slid along the track longitudinally thereof to change the position of the holder apparatus along the track.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent # 5,588,630 to Chen-Chao

US Patent # 5,367,815 to Liou

US Patent # 1,793,910 to Cuthbert et al.

US Patent # 2,458,881 to Steuer

US Patent # 3,304,036 to Davis

US Patent # 4,827,654 to Roberts

US Patent # 5,374,024 to Williams

US Patent # 6,089,524 to Lai

Chen-Chao, Liou, Cuthbert et al., Steuer, Davis, Roberts, Williams and Lai teach a holder for rod or pole having teeth for providing an angular adjustment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is

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(703) 306-5994. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703 308 2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Examiner

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12/22/04